

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.4548 of 2011

ORDER:

This Revision is preferred under Section 22 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short "the Act") challenging the order dt.26-08-2011 of the Appellate Authority-cum-Additional Chief Judge, City Small Causes Court, Hyderabad in R.A.No.231 of 2010 confirming the order dt.28-06-2010 in R.C.No.362 of 2006 of the I Additional Rent Controller-cum-XIII Junior Civil Judge, Hyderabad.

2. The petitioner herein is tenant of respondents in respect of premises bearing No.22-5-130/1, Suraj Market, Gulzar House, Hyderabad.
3. Respondent Nos.1 and 2 filed the said R.C. under Section 10(2) (1) of the Act against petitioner for his eviction from the R.C. schedule property on the ground that petitioner has committed willful default in payment of rents from September, 2000 till August, 2006. They contended that they are the owners of the R.C. schedule property, that the petitioner became tenant thereof by executing a lease deed dt.17-12-1985 in favour of the father of respondents by name Jagadesh Pershad and his two brothers Mahaveer Pershad and Ganesh Pershad on a rent of Rs.185/- p.m., that petitioner was carrying on goldsmith business in the property and that respondents became exclusive owners of the R.C. schedule property by virtue of a partition which took place on 30-04-2005, in which it fell to their share. They alleged that in spite of

repeated demands, the petitioner was not paying rents; that they issued Ex.P-1 legal notice dt.01-12-2005, which was refused by petitioner; that the petitioner was being issued receipts for the rents paid by him prior to August, 2000 and since respondents were joint owners till 30-04-2005, they are entitled to collect arrears of rent even after partition.

4. The petitioner filed a counter contending that he did obtain the R.C. schedule property under lease deed dt.17-12-1995 executed by him in favour of respondents' father and paternal uncles and that the premises which he obtained on rent under the said document had municipal No.22-5-131 and not 22-5-130/1. He alleged that he had deposited a sum of Rs.775/- at the inception of tenancy and although he was regular in payment of rents, the respondents collected the rents but did not pass any receipts. He alleged that respondents had engaged an agent to collect rents up to August, 2006 and had not personally come to collect the rents. He thus denied that he had committed willful default in payment of rents.
5. Before the Rent Controller, the respondents examined P.W.1 and marked Exs.P-1 to P-5 while the petitioner examined R.W.1 and marked Exs.R-1 to R-35.
6. By order dt.28-06-2010, the Rent Controller allowed the R.C. The Rent Controller held that though the correct mulgi number is disputed, the boundaries would prevail and since there is no dispute with regard to the boundaries of the R.C. schedule property and also its location from the boundaries indicated in the R.C. schedule, the petitioner is not permitted to take advantage of the same. The Rent Controller held that mere

wrong mention of the mulgi number, cannot be a ground to dismiss the R.C. petition. The Rent Controller held that respondents had issued Ex.P-3 legal notice dt.17-04-2005 prior to the family partition on 30-04-2005 and it was returned under Ex.P-4, that they issued another notice Ex.P-1 dt.01-12-2005 to petitioner after the partition but the same was also refused as evidenced by Ex.P-2. The Rent Controller also held that petitioner admitted that the address mentioned in Exs.P-1 and P-3 belongs to him and he therefore invoked the presumption under Section 27 of the General Clauses Act and came to the conclusion that petitioner had wantonly returned Exs.P-1 and P-3 notices. The Rent Controller further held that even though petitioner contended that the rent collector by name Kausar, engaged by respondents, used to collect the rents from petitioner even for the period for which default is pleaded by respondents, the said person is not examined and so she concluded that petitioner had failed to discharge his burden that he did not commit any willful default in payment of rents.

7. Challenging the same, the petitioner filed R.A.No.231 of 2010 before the Additional Chief Judge, City Small Causes Court, Hyderabad, who is the appellate authority under the Act.
8. By order dt.26-08-2011, the said appeal was also dismissed. The lower appellate Court held that wrong mentioning of the mulgi number would not affect the merits of the case since P.W.1 admitted that the mulgi number was wrongly mentioned in the lease deed. It referred to the contention of petitioner that he paid rents to the rent collector from September, 2000 to till August, 2006 and his evidence that he can examine the rent collector by name Kausar to prove the said fact. It held that since the said

person was not examined, the petitioner had failed to establish that he had paid rents from September, 2000 to August, 2006. It also held that the petitioner admitted in his evidence that there was a clause in the lease deed that rent receipts had to be obtained whenever rent is paid and petitioner had not explained why he did not obtain such rent receipts from the rent collector for the period of alleged default. It noticed that Exs.P-1 and P-3 notices had been sent by respondents demanding payment of rents prior to the filing of the R.C. but petitioner did not comply by paying the rents and only after filing of the R.C. he started sending the money orders from 2007 and this amounts to willful default in payment of rents.

9. Challenging the same, this Revision is filed.
10. Learned counsel for petitioner firstly contended that respondents were not entitled to file the R.C. for eviction of petitioner since the lease deed was entered into by petitioner was with their father and his brothers and therefore the R.C. itself was not maintainable.
11. In **Shankaramma and others Vs. Mohammed Abdul Hameed and another**, a Division Bench of this Court has held that if there is a sale or alienation by a landlord pending the R.C. case, the purchaser can continue the case or even file the case against a tenant, who committed default in payment of rents prior to sale even though there is no assignment of right in his favour to recover arrears. The Division Bench held that attornment under Section 109 of the Transfer of Property Act, 1882 is not necessary. It observed:

"If the transfer of the landlord's right is valid, and even if the tenant has

not attorned in favour of the transferee, the lease continues, the lessee will be entitled to the statutory protection under the Rent Control Act. He cannot be evicted except in accordance with the provisions of that Act. This is abundantly made clear from the definition of 'landlord' under Section [2\(vi\)](#) of the Rent Control Act, which reads as follows:

'Landlord' means the owner of a building and includes a person who is receiving or is entitled to receive the rent of a building, whether on his own account or on behalf of another person or on behalf of himself and others or as an agent, trustee, executor, administrator, receiver or guardian or who would so receive the rent or be entitled to receive the rent, if the building were let to a tenant.

22. The transferee of a landlord is thus entitled to collect rent as of right and he is a landlord under the inclusive definition. Since the attornment is not necessary under Section [109](#) of the Transfer of Property Act, the tenant cannot dispute the right of transferee to maintain a suit for eviction or to claim rent.”

12. In the present case, the respondents have pleaded that under a family partition they inherited the R.C. schedule premises and that the partition took place on 30-04-2005. No doubt prior to the said partition under the lease deed dt.17-12-1985 the petitioner had been granted the lease by respondents' father and his brothers. Having regard to the principle laid down in the above case, since the respondents had obtained the property in the partition prior to the filing of R.C., notwithstanding that there is no specific attornment under Section 109 of the Transfer of Property Act, 1882, they are entitled to file the R.C. against petitioner on the ground that he committed default in payment of rents prior to the partition. Therefore, this contention is without any basis.
13. Learned counsel for petitioner further contended that the petitioner had paid rents to the respondents through the rent collector by name Kausar and therefore the petitioner cannot be said to have committed default in payment of rent. The person, who collected the rents allegedly from the petitioner by name Kausar as an agent of respondents, was not examined by

petitioner in support of this plea. Therefore this contention is also without any merit.

14. Learned counsel for petitioner further contended that the petitioner had given a cash deposit of Rs.1,50,000/- to the father of respondents at the time of commencement of lease. This suggestion was denied by P.W.1. No documentary evidence has been adduced by petitioner in support of the said plea. Therefore, it cannot be said that petitioner has proved that there was an advance of Rs.1,50,000/- as a security deposit with respondents.
15. As rightly held by the Rent Controller and the lower appellate Court since boundaries of the R.C. schedule property have been clearly mentioned, even if respondents had incorrectly mentioned the mulgi number as 22-5-130/1 and the correct number is 22-5-131, having regard to the clear boundaries mentioned in the R.C. schedule, this wrong mentioning of the mulgi number cannot be held to deprive the respondents of their right to evict the petitioner.
16. Admittedly, petitioner has refused the legal notices Ex.P-3 dt.17-04-2005 and Ex.P-1 dt.01-12-2005 under Exs.P-4 and P-2. In the said notices Exs.P-3 and P-1, the respondents had demanded the petitioner to pay rents for the above period. The petitioner as R.W.1 has also admitted that the address mentioned in Exs.P-1 and P-3 belonged to him. Therefore his refusal to receive the said notices also suggests his failure to pay the rents to respondents was willful.

17. Learned counsel for petitioner lastly contended that the arrears of rents were deposited at the time of filing of the appeal R.A.No.231 of 2010 before the appellate authority and the respondents received all the arrears of rents and therefore the R.C. should have been dismissed. Learned counsel for respondents denied that respondents have withdrawn the amounts deposited by petitioner to the credit of the R.C. Be that as it may, such deposit pending appeal by petitioner does not wipe away the willful default committed by him.
18. Therefore, I do not find any merit in the Revision and it is accordingly dismissed. However, time for vacating the R.C. schedule premises is granted to petitioner upto 08-01-2016 subject to petitioner filing an undertaking within two (02) weeks from the date of receipt of a copy of this order before the Rent Controller that he would vacate the premises by the said date and also that he would deposit the arrears of rents, if any, to the credit of the R.C. within four (04) weeks from the date of receipt of a copy of this order. In default of petitioner complying with any of the above conditions, the order of eviction passed by the Rent Controller as well as the appellate authority can be enforced by respondents forthwith. No costs.
19. As a sequel, miscellaneous petitions pending if any, shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 14-10-2015

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